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Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE 414th MEETING

Held at the Palais des Nations, Geneva,
On Wednesday, 3 May 2000, at 10 a.m.

Chairman: Mr. BURNS

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ORGANIZATIONAL AND OTHER MATTERS (continued)

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.00-41827 (EXT)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Portugal (CAT/C/44/Add.7; HRI/CORE/1/Add.20)

1. At the invitation of the Chairman, Mr. Mendonça E Moura, Mr. Santos Pais, Ms. de Albuquerque, Mr. Marrecas Ferreira, Mrs. de Matos, Mr. Gomes Dias and Mrs. Graça Carvalho (Portugal) took places at the Committee table.

2. Mr. MENDONCA E MOURA (Portugal) commended the members of the Committee for their efforts and assured them that, as would be apparent from his country's third periodic report (CAT/C/44/Add.7) and the additional information which his delegation was about to provide, Portugal shared their objectives and struggle. Both before the Committee and in the other relevant United Nations bodies and international organizations, Portugal had always taken a willing and active part in combating torture.

3. The report before the Committee was, he felt, free and complete, for it had been drawn up by an entity independent of the Government, the Office of Documentation and Comparative Law, a subsidiary organ of the Office of the Attorney-General, which was itself distinct from the Executive. Furthermore, his delegation comprised two Deputy Attorneys -General, a prosecutor from the Inspectorate-General of Internal Administration, an official from the Directorate-General of Prison Services and two members of the Office of Documentation and Comparative Law. That testified to the importance that his country's Government attached to the Committee's work.

4. Mr. SANTOS PAIS (Portugal) said that his country's third periodic report covered a period ending on 28 February 1998, since when there had been a number of changes in Portuguese law and practice. In making those reforms, the Portuguese authorities had drawn directly on recommendations made by the Committee and other international monitoring bodies such as the European Committee for the Prevention of Torture.

5. The first change concerned Macao. The Committee had expressed a desire that the Convention should be applied to Macao while the territory was still under Portuguese administration, as it had been until 20 December 1999. Following lengthy negotiations with the Chinese authorities, Portugal had obtained agreement to the continued application to Macao of the Convention and of some 100 other international agreements, including some dozen concerning human rights. Hence, when its administration of the territory had ended, Portugal had left in place a panoply of national and international human rights regulations of which it would be hard to find an equal elsewhere in the Asia-Pacific region.

6. Regarding the Convention, the activities of the police remained among the principal concerns both of the Committee and of the Portuguese authorities, and the latter had radically restructured the Public Security Police. Law No. 5/99, promulgated in January 1999 in place of Decree-law No. 321/94, had introduced new rules concerning the organization and running of that force. One effect of the recent revision of the Constitution had been that the new rules had been approved by the Assembly of the Republic and not, as previously, by the Government alone. The new law had three main aims: to emphasise the civil nature of the police, whose basic tasks were to defend democratic legality and safeguard internal security and citizens' rights and freedoms; to incorporate in the police regulations principles such as legality and the prohibition of excesses in policing; to improve the structure of the Public Security Police nationwide so as to strengthen management and make the

police less remote from the population that they were charged with defending. A number of projects in pursuit of the latter aim had already been initiated; they concerned security in schools, the safety of the elderly and support for victims. Lastly, the status of members of the Public Security Police had been regulated by Decree-law No. 511/99.

7. When it had considered Portugal's previous report (CAT/C/25/Add.10), the Committee had expressed concern about the possible gap between the law and its application and had recommended that the Portuguese authorities should pay more attention to, and formally investigate complaints of violence made against police officers and impose appropriate penalties where necessary. Portugal had made great efforts in those regards and he wished to supplement the information concerning them given in the report. In the case of the Public Security Police and the National Republican Guard, there were special inspectorates to institute disciplinary proceedings when necessary. The Inspectorate-General referred to in paragraph 49 of the report could also open disciplinary proceedings; as it was headed by a Deputy Attorney-General, it enjoyed full technical and functional independence from the Ministry of the Interior. The Inspectorate-General carried out not only regular visits, but also surprise inspections, and was therefore well able to supervise conditions in police stations, especially conditions of custody there. A total of 700 premises had received such visits in the past three years and 117 of them had been closed because operating conditions and conditions of detention had been inadequate. When the Inspectorate-General found there had been an abuse of authority, the Attorney-General's Office was obliged to open criminal proceedings The Judicial Police came in organizational terms under the Ministry of Justice and in functional terms under the Attorney-General's Office, which was responsible for coordinating its activities in criminal cases. Judicial Police units were inspected at least every three years by officials from the Attorney-General's Office acting on the authority of the Attorney-General; the Attorney-General could also order special inspections whenever he felt that necessary. The prison services, which came under the Ministry of Justice, had their own inspection department divided into three teams so as to cover the entire country. Each team was coordinated by a prosecutor. The Ministry of Justice was preparing a revised version of the law governing its own operation that would enable it to establish an inspectorate-general with responsibility for monitoring the activities of a range of bodies coming under the Ministry, including the Directorate-General of Prison Services.

8. To enable it to track criminal cases against civil officers, the Office of the Attorney-General had, in 1993, established a database showing the status of all such proceedings: since procurators were responsible for informing it of all cases brought against civil officers, the Office was able to keep a running total of such cases and see how it varied with time. The Office had recently began to notify the Directorate-General of Prison Services and the Inspectorate-General of Internal Administration of all cases brought against their officials so that they could take the necessary disciplinary measures. It would soon have a central investigation and criminal prosecution department with special responsibility for ensuring coordination between the criminal police and the prosecution services in the judicial district concerned regarding the investigation of crimes against peace and humanity, including the crime of torture. That was all evidence of Portugal's resolve to take judicial action regarding all allegations of acts falling under the Convention against Torture; disciplinary or judicial proceedings or both were opened for every offence potentially coming under the Convention.

9. A recent decree-law had imposed uniform rules on the use of firearms by police corps. Pursuant to the principles of overriding need and proportionality, the use of firearms was only permitted in exceptional circumstances and when no better alternative was available. A distinction was made between the use of such weapons against objects and against persons. In the second instance, the weapons could only be used to protect human life and in the three situations mentioned in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement

Officials: against an imminent threat; to prevent the perpetration of a particularly serious crime involving grave threat to life; to arrest a person presenting such a danger and resisting officials, or to prevent the person's escape. The use of firearms was further subject to the provision of warnings and assistance and to the submission of a report to the Attorney-General's Office. If the use occasioned death or serious injury, the Inspectorate-General of Internal Administration had to be informed and to open an immediate inquiry.

10. The Committee had expressed concern in the past about conditions of detention in police custody. A recent ministerial order regulated the material conditions of confinement in any police detention facility of any person deprived of liberty for less than 48 hours, including persons held for the purposes of identification. The order contained specific provisions concerning cells (size, location, building materials, lighting, sanitary facilities, hygiene and comfort) and required the gradual renovation of existing cells. In all, 140 unsuitable detention facilities had already been closed. The new regulations also specified the procedures for detention and instituted various safeguards: detention registers, fact sheets on detainees stating the time of, and reason for detention, the identities of the detainee and the arresting officer, and other relevant information such as what contacts there had been with third parties. Detainees had the right to telephone relatives and their lawyers and were entitled to privacy when talking to the latter. They could also asked to be examined by a doctor and, if injured, must be taken to hospital. All detention facilities were subject to surprise inspections by the Inspectorate-General of Internal Administration. That body and the Attorney-General's Office must be informed without delay of all cases of the death or violent, inhuman or degrading treatment of detainees.

11. The Committee had also expressed concern about conditions in penal institutions. The Office of the Ombudsman had carried out two inspections of penal institutions, in 1996 and 1999. The first had led to the submission to the Minister of Justice of nearly 200 recommendations and the second to a finding by the Ombudsman that progress had been made. The European Committee for the Prevention of Torture had visited Portugal four times, in 1992, 1995, 1996 and April 1999; it, too, had found evidence of significant change, particularly at Porto. Thanks to the implementation of the 1996 Programme of Action for the Prison System, the rate of prison overcrowding had fallen from 57% in 1986 to 14% at the present day. The principal reasons for that were the opening of new establishments, the renovation of existing prisons, and the declaration in 1999 of an amnesty. Physical conditions in prisons had also grown better, with the installation of toilets in cells and improvements to exercise rooms, kitchens, interview rooms and other shared facilities. Health services had not been overlooked in the improvements: creation of drug-free units in five prisons; adoption by the Council of Ministers of a national drug abuse control strategy giving high priority to prisons; building of new health units; establishment of methadone-distribution, vaccination and other health-related programmes for prisoners; promulgation of law No. 170/99 against the spread of infectious and contagious diseases in prisons; improvement of prison life through wider provision of education, vocational training and cultural and sporting activities and the possibility for inmates of open prisons to train and work outside the institution; increased attention to the preservation of family ties, with the creation in 1999 of private meeting rooms in two long-stay prisons. The penal services were subject to vetting by several outside bodies, including: the sentence enforcement board, which made monthly visits to each prison for the confidential hearing of inmates' complaints; the Ombudsman; the European Committee for the Prevention of Torture, and the European Court of Human Rights.

12. Regarding training, Law No 5/99 on the organization and operation of the Public Security Police had established a new organizational framework for police training schools comprising, for officers, the Higher Institute of Police Science and Internal Security and, for lower ranks, the Police Practical School. In addition, the Council of Ministers had established an advisory board on training

for security forces and services; it was responsible for studying, coordinating and planning police training courses and campaigns and included among its members eminent representatives of civil society and academia. The in-service training programme devised in collaboration with the Open University and begun in 1997 was continuing. It was aimed at all members of the Public Security Police and the National Republican Guard and covered all matters of concern to them: fundamental rights, professional ethics, study of social groups, neighbourhood policing, etc.. It also provided for the training of a large number of trainers, for whom 21 courses had so far been held. Eight video films and accompanying manuals had been produced, covering such varied fields as fundamental rights, professional ethics, protection of individuals and victim support, immigrants, minorities, and drug addiction. The video films had been distributed throughout the country and shown to more than 45,000 police officers. A written evaluation test was held after each module. Further video films were in preparation.

13. The Portuguese National Commission for the United Nations Decade for Human Rights Education had undertaken to disseminate within Portugal information about the Convention and the Committee's work. The Commission's website was hosted on the site of the Office of Documentation and Comparative Law, which contained a section dealing with international protection of human rights that included explanations of the Convention's main provisions, including the provisions on the submission of communications by individuals, and of the Committee's work. The site also gave access to the texts of the three periodic reports that Portugal had submitted to the Committee, the summary records of the meetings at which the Committee had considered those reports and the Committee's conclusions and recommendations to Portugal. The Office of Documentation and Comparative Law published a quarterly comparative-law newsletter which was distributed free to all judges and to which numerous lawyers and legal scholars had taken out subscriptions. The texts of Portugal's third periodic report under the Convention and of the Committee's summary records and conclusions and recommendations concerning the first two such reports had all been printed in that newsletter at the beginning of 1999. Another issue of the newsletter had contained an article on the Convention and on the Committee's procedures and competence.

14. The National Commission would be translating into Portuguese the series of United Nations "Fact Sheets", including a leaflet about the Committee, and the publications in the United Nations Professional Training Series, No. 5 of which was entitled "Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police". The Commission would publish those texts and distribute them to the occupational groups directly concerned, as well as to schools, universities and other teaching establishments, public libraries and so on.

15. The regulations concerning aliens' entry to, presence in, and exit and expulsion from Portugal had been changed. The changes were aimed principally at giving effect to all Portugal's international undertakings; they also took into account decisions of the European Court of Human Rights regarding expulsion procedures in particular. The main features of the new regulations were: differential rules for the granting of visas, so as to ensure greater fairness, justice and transparency; clear rules regarding family reunification; exemptions, especially in humanitarian cases, from the normal rules on residence permits; assistance for immigrants returning to their countries of origin; penalties for people who furthered illegal immigration or employed illegal migrants.

16. There had been significant changes in other areas too, including the extensive amendment of the framework law on cooperation in criminal cases that had been undertaken in 1999 and the alterations made in 1998 to the mental health law. Much had been done since 1989, thanks in particular to the Committee's advice and recommendations, but progress was principally dependent on time, patience and experience. Protecting human rights was an arduous and never-ending task.

The Committee could be assured that his delegation would report regularly to it on its successes and failures in that long struggle.

17. The CHAIRMAN, speaking as the rapporteur for Portugal, thanked the representative of Portugal for his very detailed statement, which had answered several of the questions he himself had intended to put. Portugal had accepted the Committee's competence under articles 20 and 22 of the Convention and was a contributor of several years' standing to the United Nations Voluntary Fund for Victims of Torture; its Government's latest measures to give effect to the Convention were excellent. The third periodic report, due in 1998, had been received in June 1999. It covered the period from 31 March 1996 to 28 February 1998 and showed that there had been numerous significant changes since the consideration of the previous report.

18. There remained a number of points of concern. Firstly, while Portugal had strengthened the law regarding the structure and operation of the police, the latter's activities and behaviour still constituted a thorny problem, as the representative of Portugal had himself admitted.

19. With respect to article 1 of the Convention, Portugal had included in its Criminal Code a definition of torture and cruel, inhuman or degrading treatment. That definition was, however, narrower than the one in the Convention, inasmuch as offenders could sometimes be subject to a disciplinary, administrative penalty, rather than to criminal prosecution. The setting-up of the Inspectorate-General of Internal Administration referred to in paragraph 49 of the third periodic report represented a considerable step forward. What explained the decline mentioned in paragraph 51 of that report in the number of people complaining of violence by the police?

20. In addition to the concerns raised by information in the report, he drew the Portuguese delegation's attention to allegations made by Amnesty International in its report "Portugal: 'Small problems'...? A Summary of Concerns" regarding in particular deaths in, or after police custody, ill-treatment of arrestees by police officers and illegal detention by police officers. In that regard, it was especially important that police officers should fill out custody registers properly He would like to know whether the allegations made by Amnesty International were correct and whether they had given rise to prosecutions and to action by the authorities to prevent recurrences of incidents of the types in question. It was also alleged in the Amnesty International report that, because of the slowness of judicial proceedings, persons guilty of torture or ill-treatment in effect acted with impunity, suffering little or no penalty or simply being disciplined. Was that in fact true?

21. Concerning the situation in penal establishments, the information provided orally suggested that the Portuguese Government had taken steps to prevent torture and ill-treatment, thereby resolving a further concern expressed by Amnesty International.

22. As the Committee had remarked in its conclusions and recommendations concerning Portugal's second periodic report, it would be desirable for the Government to state its position concerning the extent of its criminal jurisdiction when acts of torture were committed outside its territory. It was not clear from the third periodic report what that position was. The Convention not only permitted, but also required States to exercise universal jurisdiction with respect to acts of torture.

23. It was gratifying that Portugal had succeeded in obtaining the application to Macao of the Convention against Torture and that China had agreed to uphold the Convention as the successor State. The measures taken to regulate the use of firearms by the various police forces and the conformity of the relevant regulations with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were sources of great satisfaction.

24. Mr. YU Mengjia (Co-rapporteur) thanked the Portuguese delegation for the quality of its introduction and congratulated the Portuguese Government on having supplemented and improved its legislation. It seemed, however, that more effort was required to ensure better application of article 11 of the Convention and to reduce the duration of judicial proceedings, which, according to certain sources, could be excessive. A further worrying, and apparently persistent problem was that of violence between prisoners. Was the Portuguese Government doing anything to remedy it?

25. The two statistical tables in paragraph 202 of the report were of great interest with respect to the application of article 12 of the Convention. The existing legislation seemed altogether adequate for the application of article 13; it would be interesting to know whether it could be easily and rapidly implemented. With reference to article 14, there seemed to be relatively few applications for compensation; could the Portuguese delegation say why that was? In view of the reports that some prison warders and officials engaged in drug trafficking with prisoners, he wondered what the Government was doing to prevent and end the presence of illicit drugs in prisons.

26. Mr. CAMARA said that he too was satisfied both with the written report and with the oral information. Having been rapporteur for Portugal during the consideration of the second periodic report, he was not surprised by the quality of the measures taken by the Portuguese authorities. The Committee's role was, however, to increase its knowledge of situations and it was, therefore, demanding in its inquiries.

27. Regarding the reference in paragraph 135 of the report to detention for the purposes of identification, he observed that French law on identity checks (vérification d' identité) entitled the police to request people to show their identity papers even when no offence had been committed. That practice, which was common to a number of countries, was not without its problems. In Portugal, the law provided that anyone who could not or would not present an identity document was taken to the nearest police post for a maximum of two hours in order to be identified. What happened if the person still refused to reveal their identity when the two hours were up? It was often on such occasions that violence occurred in police stations. States could not be expected to forgo identity checks, but measures to prevent abuses were essential.

28. Given the figures concerning complaints against police officers in paragraph 202 of the report, he had a number of questions regarding the application of articles 12 and 13 of the Convention. In particular, for what types of offence was an investigation or trial "pending" and why were proceedings so often only at the "pending" stage? As the Convention required that a prompt and impartial investigation be made whenever torture was alleged, he feared that the extreme slowness of proceedings might result in impunity or an impression of impunity. Disciplinary proceedings for torture or ill-treatment could be instituted in parallel with criminal proceedings; had that ever been done?

29. Mrs. GAER said that the figures given in paragraph 202 of the report concerning article 12 of the Convention were impressive. She would like to know whether the very marked decline in complaints against police officers for the commission of criminal offences while on duty was attributable to the visits of the European Committee for the Prevention of Torture, the Committee against Torture's interest in Portugal, special efforts by the Portuguese Government or a lack of information. She also wondered how many people had been amnestied or had their sentence reduced after conviction.

30. That the Convention would remain applicable after the return of Macao to China was gratifying, but she would also welcome information about implementation of the Convention in

Macao during the period of Portuguese administration, a subject on which she had seen nothing in the report. According to paragraph 5 of the core document (HRI/CORE/1/Add.20) Portugal was still the Administering Power for East Timor, but had been unable to function as such since December 1975 because of Indonesia's illegal occupation of the territory. In view in particular of the reports that the occupying forces had committed rape and torture, she would like to know how the situation that had obtained since August 1999 had affected Portugal's obligations under the Convention. Had the Portuguese authorities tried to verify those reports and what did they intend to do about the situation?

31. With respect to ill-treatment in prisons, she wondered whether complaints of sexual abuse were handled in the same way as other complaints and what steps had been taken to prevent sexual violence. The news about training programmes for the police was very encouraging; she would like to know whether the programmes gave any particular attention, for example in the video films that the delegation had mentioned, to violence against women. As some cases had given rise to formal inquiries, she would also like to know whether police officers had been sanctioned.

32. A member of the Committee had already expressed concern about the problem of "gang leaders" among detainees. Did the authorities do anything to maintain control in places of detention and to ensure the prison population's safety?

33. Paragraphs 34 (h) and 91 of the third periodic report referred to the removal of organs from dead or living persons. According to article 10 of Law No. 12/93, "all national citizens or stateless persons or aliens residing in Portugal who have not expressly informed the Ministry of Health that they do not wish to be donors" were considered as "potential post-mortem donors". She would therefore like more information on the safeguards established with regard to organ removal and on the measures taken to ensure that citizens' consent was properly informed.

34. Mr. RASMUSSEN congratulated the Portuguese Government on the quality of its third periodic report. Paragraphs 81 to 87 of that document dealt with the role of doctors, but failed to say anything about the essential part they could play in preventing torture. While it was gratifying that persons in custody could call on the services of a doctor of their choice, it was also very important that such persons should be examined by a doctor upon their arrival at the place of detention. He would like to know whether there were special instructions for prison doctors, whether there were special forms for them to fill out if they found evidence of bruising or other lesions and whether, in the event of such a discovery, they merely described their findings or also reported any allegations of ill-treatment or torture and gave their conclusions concerning them. What action was taken on prison doctors' reports?

35. The CHAIRMAN invited the delegation to respond at the beginning of the Committee's next meeting to the questions which had been put to it.

36. The delegation of Portugal withdrew.

The meeting was suspended at 11:25 a.m. and resumed at 11:45 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

37. The CHAIRMAN announced that Amnesty International had requested permission to make video recordings of the public meetings at which the Committee would consider the reports of China and United States of America. The Committee had, at one of its earliest sessions, discussed the recording of meetings and decided that there was no reason in principle not to allow the recording of public meetings, providing the recording activity was unobtrusive. The representatives of Amnesty

International had undertaken to be unobtrusive. The Committee could, therefore, keep to its earlier decision, unless members objected.

38. Mr. MAVROMMATIS said that he approved the principle, but feared the Committee might be accused of permitting recording for particular countries. That being so, the Chairman should state the Committee's position of principle at the beginning of meetings and make it clear that the consideration of any country's report could be recorded.

39. The CHAIRMAN approved that suggestion.

Appointment of reporters and co-rapporteurs for country reports to be considered at the twenty-fifth session in November 2000

40. The CHAIRMAN suggested that Mrs. Gaer and Mr. Burns should be the rapporteurs for the third periodic report of Belarus, Mr. Mavrommatis and Mr. Rasmussen the rapporteurs for the second periodic report of Australia, Mrs. Gaer and Mr. El Masry the rapporteurs for the third periodic report of Canada, Mr. Yakovlev and Mr. Mavrommatis the rapporteurs for the second periodic report of Georgia, Mr. Camara and Mr. Henriques Gaspar the rapporteurs for the second periodic report of Cameroon, and Mr. González Poblete and Mr. Rasmussen the rapporteurs for the third periodic report of Guatemala.

41. Regarding the Committee on the Rights of the Child's note for information on State violence against children (document without a symbol), he suggested that in its reply the Committee against Torture should formally undertake to support the proposed discussion, express its concern about and systematic opposition to State violence against children and offer its support in principle for all action on the matter by the Committee on the Rights of the Child.

42. Following a brief exchange of views in which Mr. EL MASRY, Mr. BRUNI, Mr. MAVROMMATIS, Mr. GONZALEZ POBLETE and Mrs. GAER took part concerning the distribution of documents, the CHAIRMAN remarked that all documentation for a session was sent to the members of the Committee before the session. For reasons of cost and time, summary records concerning specific countries were only distributed in advance to the rapporteurs and co-rapporteurs concerned. A full set of summary records could be kept in the meeting room for consultation.

The meeting rose at 12:15 p.m.

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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 415th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 May 2000, at 3 p.m.

Chairman: Mr. Burns

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Poland (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.415/Add.1.

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GE.00-41804 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Poland (continued) (CAT/C/44/Add.5)

1. At the invitation of the Chairman, the members of the delegation of Poland, Mr. Knothe, Mrs. Janiszewska, Mr. Przemyski, Mr. Sledzik, Ms. Zurek and Ms. Wyznikiewicz took places at the Committee table.

2. The CHAIRMAN invited the Polish delegation to respond to the questions raised by the Committee at a previous meeting.

3. Mrs. JANISZEWSKA (Poland) said that there was no definition of torture in Polish legislation because the Convention against Torture constituted a universally binding source of law under article 87, paragraph 1, of the Constitution and was applied directly by law-enforcement bodies. International treaties ratified by Poland took precedence over legislation passed by the national Parliament. With regard to the prosecution of specific acts covered by the definition of torture in article 1 of the Convention, articles 246 and 247 of the new Penal Code in force since 1 September 1999 introduced a new category of crime defined as the use of force or unlawful threats by a law enforcement official or anyone acting on his or her behalf to obtain testimony from a witness, court expert or interpreter. The new provisions, introduced in response to the recommendations of the Committee against Torture, also facilitated the compilation of statistics by singling out the perpetrators of that category of crime.

4. While it was theoretically possible under treaty law to denounce the Convention, such a step would constitute an infringement of the Polish constitutional norm prohibiting the use of torture and inhuman and degrading treatment.

5. With regard to responsibility for acts carried out under orders, she said that, under Polish criminal law, no one could be absolved of responsibility for criminal acts unless it was held that the accused had not committed a crime for reasons of non-accountability or because he or she was carrying out orders under specifically defined circumstances. Criminal responsibility depended on whether a person was aware that he or she was committing an offence. Although the new Penal Code introduced no significant change in that regard, it specified that a person who refused to carry out wrongful orders was not committing an offence. The superior who issued the order incurred criminal responsibility in the light of general principles and in cases where the subordinate refused to carry out the order. The superior could be held responsible for incitement and abetting.

6. The Polish Code of Criminal Procedure did not specifically mention torture as a reason for rejecting an application for extradition but prohibited extradition in cases where Polish law would be breached. The term "Polish law" comprised all international treaties to which Poland was a party, an interpretation confirmed by the Supreme Court in the case described in paragraphs 46 and 47 of the report (CAT/C/44/Add.5). The delegation was unable to provide precise data regarding specific countries that had applied to Poland for extradition of a person

present in its territory but would endeavour to do so as soon as possible. However, most applications during the reporting period had come from European countries with which Poland had extradition agreements, principally Germany. Applications had been rejected in cases where the person concerned had Polish citizenship, where the charge did not fulfil the requirement of double criminality, for example when the applicant country was the Russian Federation, or where extradition would constitute a breach of international norms.

7. With regard to universal jurisdiction, the new Penal Code provided for the prosecution of persons present in Polish territory who were charged with crimes subject to prosecution under international law and who could not be extradited.

8. The new Penal Code prohibited attempts to influence testimony during interrogation through the use of violence and unlawful threats or through hypnosis or the administration of chemical substances. Evidence obtained by such means was inadmissible.

9. Under the new Penal Code, there was no statute of limitations with respect to crimes against peace, crimes against humanity and war crimes. The same principle applied to international offences against health, life or freedom committed by public officials in the performance of their duties. Although the new provision could not be applied retroactively, the Polish legislature had provided for the prosecution of such crimes committed prior to the political changes of the previous decade. Thus, the regulations introducing the new Penal Code stipulated that limitations in respect of crimes committed between 1 January 1944 and 31 December 1989 operated with effect from 1 January 1990.

10. Under the 1997 Code of Criminal Procedure, the accused could opt to accept the penalty suggested by a prosecutor and to be sentenced without the hearing of evidence. Such proceedings took place in a court of law and only in cases where no doubt existed. The simplified procedure did not allow for conviction without trial and sentencing.

11. Mr. PRZEMYSKI (Poland) said that the commander of the police station in Lomazy who had fatally shot a suspect had stood trial on a charge of homicide and been sentenced to 15 years' imprisonment. The Court of Appeal had quashed the sentence, ruling that characterization of the crime as "fatal bodily harm" would have been more appropriate. The case was pending. According to an internal police inquiry, the police officer had not been on duty at the time and had been under the influence of alcohol. A programme to combat the problem of alcohol abuse in the police force had since been introduced. It drew on the services of psychologists and specialized non-governmental organizations (NGOs) and provided for the establishment of police health clinics.

12. In Slupsk, the unwarranted use by a police officer of his baton during disturbances following a basketball match had led to the death of a 13-year-old boy. The officer had been prosecuted and sentenced to eight years' imprisonment. The provincial and municipal chiefs of police responsible for supervision of the police intervention had been dismissed from their posts following an inquiry.

13. The case of two people who had been shot dead by a police officer in Warsaw had been variously interpreted and was highly controversial. Although the officer in question had been sentenced to seven years' imprisonment for homicide, the defence, supported by the police trade union, was appealing against the decision on the grounds that the officer had been acting in self-defence. He had allegedly been attacked by a group of men after thwarting an attempted robbery of an unarmed woman by firing warning shorts in the air. The case was pending.

14. Systematic action was being taken to address unlawful behaviour by police officers. New psychological tests had been included in the recruitment procedure. An average of 80 per cent of candidates applying for service in recent months had been rejected on psycho-physical grounds. Training programmes were continuously adjusted in the light of analyses of major human rights abuses involving law enforcement officers. A police code of conduct had been formulated on the basis of United Nations recommendations. It stressed the need to respect human rights and the dignity of the individual. Almost 60 per cent of police officers were young recruits who had entered the force after 1990 and who had a positive attitude to human rights training.

15. All law enforcement agencies had an extensive control and review system that operated on several different levels. A complaint could be filed against a police officer through the legally sanctioned channels to his or her commanding officer, whose decision could be appealed against at successive levels up to and including the Commander-in-Chief. Secondly, members of the public could use a toll-free telephone number that had been created some three weeks previously to complain of police abuses of authority. The information was analysed by an internal police department and could lead to the filing of criminal charges. Thirdly, a complaint could be filed directly with the competent prosecutor's office, which conducted its investigations independently of the police force. Fourthly, the Ministry of Internal Affairs had established the office of Spokesperson for Victims' Rights, a mediator who operated independently of the Police and Border Police, cooperated closely with NGOs and could react immediately to complaints by victims of criminal acts, perpetrated in some cases by the police. A similar service was performed by the Civic Rights Ombudsman, an institution that had been in existence for over ten years. Watchdog functions were also exercised by NGOs such as the Helsinki Committee, Amnesty International and minority rights organizations, and by the free media. There had been no recorded attempt to prevent the media from disclosing information that tarnished the image of the law enforcement agencies. On the contrary, media publicity had often led to changes in the agencies concerned.

16. The phenomenon of fala or bullying in the Polish armed forces had first attracted public attention in the 1980s. It had never been an organized or officially approved activity but rather a sociological phenomenon associated with the hierarchical system prevailing in the armed forces. As the army was composed overwhelmingly of conscripts, many positions of command were occupied by young soldiers, which made supervision more difficult. However, as a result of changes in the organization of the armed forces in recent years, particularly the shortening of the period of compulsory military service, the phenomenon of fala was dying out. Associated crimes against human dignity were vigorously prosecuted by the Chief Military Prosecutor's Office. A total of 134 soldiers had been charged with fala.

17. Mr. SLEDZIK (Poland) said that, pursuant to the new Code of Criminal Procedure, the rights and duties of prisoners were regulated by act of Parliament. Article 4 of the Penal Code stipulated that penal, preventive and security measures were to be applied in a humanitarian way, with due respect for the prisoner's dignity. Prisoners had the right to appropriate food, if necessary in accordance with medical instructions, adequate clothing, free medical attention and health care. Prisoners could also, at their own cost, consult doctors of their choosing.

18. Of the total of 530 complaints about prison conditions received in 1999, 51 had been found to be justified. They concerned, for example, lack of proper lighting, overcrowding and failure to provide meals fulfilling religious requirements.

19. The rights and freedoms of prisoners were monitored by the prison administration, the courts, the Civic Rights Ombudsman and NGOs. Complaints filed through the administration were reviewed by the Inspection Department of the Prison Service and regional inspectorates, which also carried out routine inspections of all aspects of the functioning of prison facilities. The penitentiary judge, who was independent of the Prison Service, monitored general prison conditions and the legality and propriety of measures taken in prison facilities, focusing on coercive measures and improper treatment of prisoners by staff. The judge had unlimited access to the premises and all relevant documents, and was authorized to demand clarifications from the prison administration. In the event of flagrant transgressions, the penitentiary judge instructed the superior body in the prison administration hierarchy to remedy the situation. The judge's recommendations could even result in the closing of a facility. The decisions of the penitentiary judge could be appealed against in court. The court reviewed the case in closed session or through a hearing.

20. Prisoners could also direct complaints to the Civic Rights Ombudsman, governmental and non-governmental organizations and the European Court of Human Rights. Informal control was exercised by society at large through the "open door policy" and participation in the rehabilitation process.

21. The Prison Service ran 14 hospitals and 193 infirmaries and sickbays. If necessary, prisoners could be treated in non-prison facilities but the time spent in such facilities did not count towards execution of the penalty. Decisions by the medical personnel were subject to review by the appropriate medical commission and supervision by the Chief Medical Officer of the Prison Service.

22. Prisoners were entitled to unlimited contacts with their counsel. Under the new Penal Code, they could be represented in all matters by persons of trust, including representatives of NGOs, motivated by the aim of assisting in their social rehabilitation.

23. Although Poland did not compile separate statistical data concerning incidents of torture, every complaint, especially concerning unlawful treatment of a prisoner by a public official, was investigated in the light of any possible connection with torture or inhuman or degrading treatment. Among the justified complaints investigated to date, no such finding had been made.

24. Women prisoners were held separately from men and had access to extensive psychological and educational rehabilitation facilities. They were free to decorate their cells as they wished, to use make-up and to wear their own clothes. The purpose of such departures from the general principles of incarceration was to alleviate stress. As all immediate-contact prison staff were women, female prisoners were not at risk of sexual abuse by men. Moreover, special attention was given to psychological and other attributes in selecting staff for women's prisons. No sexual offences against women had been recorded during the reporting period.

25. Mr. PRZEMYSKI (Poland) said that article 142 of the Police Act had been rendered null and void by the entry into force on 1 September 1999 of the new Penal Code, making any abuse of power by a public official subject to its provisions. The sentence handed down by the regional court against the police officer involved in the Slupsk incident had been changed on appeal to an eight-year prison term on the basis of article 156 of the Penal Code (causing fatal bodily harm in the performance of official duties).

26. The Commander-in-Chief of the Polish police had categorically prohibited the keeping in police stations of any object that might be suspected of serving the purpose of exerting unlawful pressure, including torture. The vast majority of such objects had been confiscated following altercations with "pseudo-fans" following football matches. A small trophy museum at the Lublin Riot Police Squad premises of items abandoned by fans had been destroyed on the instructions of the commanding officer although apprehended individuals were never taken to that unit.

27. Training courses for law enforcement officers at all levels placed considerable emphasis on education and information about human rights, particularly the unlawfulness of torture and cruel or degrading treatment. All provincial police commanders of units of 3,000 to 10,000 officers had attended specialized training courses in the United States, the United Kingdom and the Netherlands. Similar courses for commanding officers of the Police and Border Guard were being conducted in Poland. Some 50 Polish police officers were serving in the United Nations International Police Task Force in Bosnia and Herzegovina. They monitored compliance with human rights standards by local police forces and lectured on related issues at the United Nations Police Academy in Sarajevo.

28. Mrs. JANISZEWSKA (Poland), replying to the Committee's questions about the functioning of the National Judiciary Council and the office of the Minister of Justice, said that the former had been set up in 1989. Its primary task was to consider candidates for appointment as judges to the Supreme Court, the Higher Administrative Court, common law courts and military courts, and transmit its recommendations to the President of the Republic. Its other main functions were to consider and approve proposals for moving judges to other posts, to express opinions on the professional conduct of judges, to adopt positions on amending the law on common courts, to take note of acts concerning the courts, and to supervise training and examinations for the judiciary. The membership of the National Judiciary Council comprised the Chief Justice of the Supreme Court, the Minister of Justice, the President of the Higher Administrative Court, a representative of the President of the Republic, 15 persons elected from among the members of all types of court under the Council's jurisdiction, 4 parliamentary deputies, and 2 senators. All members served for four years.

29. The Minister of Justice was a Cabinet member responsible for reporting to Parliament on the efficiency of the judicial system. The Minister was not subject to the ban on membership of political parties or on political activities, since he was not the public prosecutor. Rather, he performed the function of Attorney-General, in which capacity he either personally directed the public prosecution service or delegated certain functions to his deputies, one of whom was the national prosecutor.

30. The Attorney-General issued guidelines and instructions that were binding on the public prosecution service, and was empowered to take any acts within that Service's scope of operations or to order his subordinates to do so on his behalf, except for certain functions that the law assigned to him alone. He was also empowered to take over the functions of his subordinates if necessary.

31. Mr. EL MASRY (Country Rapporteur) thanked the delegation for their lucid and concise explanations, which had reflected a spirit of true cooperation and a keenness to engage in meaningful dialogue. However, on two issues the delegation's replies had merely echoed the information contained in the report: the definition of torture contained in the national legislation and the circumstances in which orders given by superiors could still be cited as justification for acts of torture.

32. Ms. GAER, after endorsing the previous speaker's appreciation of the delegation's efforts, said she was disappointed that it had been unable to reply in greater detail to her questions on sexual violence. In particular, she would like to know about the general provisions governing sexual violence in prisons, how complaints were handled, and what safeguards were in place. Although the statistics provided seemed to indicate that the arrangements for dealing with sexual violence in prisons were successful - in which case the Committee could benefit from Poland's experience - it was, sadly, often the case that the absence of reports on cases of sexual violence indicated lack of awareness on the part of the responsible authorities. She would like the delegation to elaborate further on such matters, if not during the current meeting then in the next periodic report.

33. The CHAIRMAN said that the delegation's willingness to respond to the Committee's questions was a reflection of the legal and administrative systems in Poland itself. He would like clarification on one point: in response to his question, the delegation had appeared to state that there was no universal jurisdiction over the crime of torture in Poland. On reflection, he supposed that meant that universal jurisdiction had been incorporated into domestic law through the assimilation of the Convention into Poland's new Constitution. Was that the case?

34. Mr. KNOTHE (Poland) said that his delegation had intended to answer in the affirmative to the Chairman's question on universal jurisdiction. With regard to the question of defining torture in national legislation, he felt that the Committee's queries had revealed the persistent and fundamental difference between their thinking and that of Poland's legislators. Not for the first time, it would be difficult for the Polish delegation to convey the Committee's concerns about definition of torture to its legal authorities. On the one hand, article 91 of the Constitution stated clearly that ratified international agreements should constitute part of the domestic legal order, and that such instruments - which included the Convention - took precedence in case of conflict. None of the distinguished legislators involved in the deliberations on the new Penal Code and

Constitution had doubted that an adequate definition of torture thenceforth existed, both de jure and de facto, in Polish law. On the other hand, he was concerned at the Committee's continuing dissatisfaction in that regard, and the likelihood that the next periodic report would reflect exactly the same view on the part of the Polish authorities, unless they could be made aware of the precise nature of the Committee's position.

35. The CHAIRMAN thought that the problem did not simply concern the differences between opposing legal cultures. All legal codes were based on certain common principles, one of which was the principle of legality, which the Anglo-Saxon tradition had indeed adopted from both the Roman and the continental legal systems. However, one of the assumptions that underlay the principle of legality was that no person could be accused or convicted of a crime that was not clearly defined and did not exist prior to the act. In the case of alleged acts of torture in Poland he appreciated that there would be no difficulty in referring to the definition of torture contained in the Convention, since Poland had ratified it. However, the fact that no definition of torture existed in domestic law would lead to great practical difficulties. What specific parts of the criminal code applied to torture, what were the penalties, and how precisely could one enact any implementation provisions?

36. Mr. YAKOVLEV (Alternate Country Rapporteur) said the Committee appreciated that countries - and Poland was not alone in that regard - would experience psychological and political difficulties in introducing new domestic legislation on torture. However, the thrust of the Convention's requirement was that abuse of a prisoner by an interrogator, who carried the full weight of the State behind him, was fundamentally different from bodily harm or abuse of power committed in everyday circumstances. Moreover, the conditions under which torture was carried out represented a threat to the very foundations of democracy.

37. The CHAIRMAN thanked the members of the delegation for their strenuous efforts to engage in full and open dialogue.

The public part of the meeting rose at 4.05 p.m.

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Twenty-fourth session

SUMMARY RECORD OF THE 416th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 May 2000 at 10 a.m.

Chairman: Mr. BURNS

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GE.00-41874 (EXT)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of China (CAT/C/39/Add.2)

1. At the invitation of the Chairman, the members of the delegation of China, Mr. QIAO Zonghuai, Ms. LI Yanduan, Mr. Stephen Wong, Mr. LIU Boxiang, Mr. LIU Xinsheng, Mr. ZHANG Weida, Mr. CHEN Lihua, Mr. ZHAO Liping, Mr. XU Hong, Mr. TENG Wei, Mr. LI Yuqian, Ms. XUE Shulan, Mr. DONG Tonghui, Mr. REN Yisheng, Mr. WANG Xue-en, Ms. QI Xiaoxia, Mr. ZHU Yong, Mr. CONG Jun, Ms. LI Wen, Mr. John Dean, Mr. David Wong, Ms. Eliza Yau, Ms. Anita Ng and Ms. Eva Wong took places at the Committee table.

2. The CHAIRMAN welcomed the Chinese delegation which comprised representatives of both the Central People's Government and the Government of the Hong Kong Special Administrative Region, and invited it to present China's third periodic report.

3. Mr. QIAO Zonghuai (China) said that China attached great importance to its reporting obligation under the Convention against Torture. China had ratified the Convention in 1988 and one year later had submitted its first report, which had been followed, in 1992, by a supplementary report. China's second periodic report had been presented in December 1995. The third periodic report, which was before the Committee for consideration, had been drafted in close consultation with the Supreme People's Court, the Ministry of Public Security, the Ministry of Justice and a number of non-governmental organizations. It had been drawn up in accordance with the General Guidelines Regarding the Form and Contents of the Periodic Report to be submitted by States Parties and contained replies to the questions raised by the Committee during its consideration of previous reports.

4. It had always been the principle of the Chinese Government to oppose and prohibit torture and other cruel, inhuman or degrading treatment or punishment. It had taken effective steps to prevent the perpetration of such acts by State officials, especially judicial officers, and to punish those who had committed them. Since its accession to the Convention in 1988, China had earnestly fulfilled all its obligations under the Convention and had pursued its efforts to improve its legislation and enforce the relevant legal provisions against torture. For example, since the submission of China's second periodic report, the National People's Congress had adopted amendments to the Chinese Constitution and had approved a provision stipulating that the country would be governed in accordance with the rule of law. In 1996 and 1997, China had amended and improved its Penal Code and the 1979 version of its Code of Criminal Procedure. Both texts reaffirmed the fundamental principles of criminal law, such as the principle that offenders should be convicted and punished according to the law and that no person should be found guilty without being judged by a People's Court in accordance with the law. Those texts also contained more explicit provisions regarding the legally prescribed procedures to be followed by the judicial organs in collecting evidence and prohibited the extortion of confessions by torture or other unlawful means. The purpose of those provisions was also to enhance the role of lawyers in the protection of the legitimate rights and interests of suspects. Furthermore, in order to prevent torture during judicial procedures, the Chinese executive and judicial organs had formulated a series of legal and institutional measures. One example was the Regulations on the Use of Police Instruments and Weapons by the People's Police and the Regulations on the Supervision of Public Security Organs, which had been issued by the State Council in 1996 and 1997 respectively. The Ministry of Public Security had likewise published a set of service regulations governing the conduct of public security forces, including the Regulations on Procedures for Handling Criminal Cases by Public Security Organs. Similarly, the Ministry of Justice had adopted various regulations on the procedures to be

followed by judicial organs, while the Supreme People's Procuratorate had drawn up regulations on the reporting of offences and had issued rules banning the use of coercive measures against witnesses or the imposition of compulsory measures before legal proceedings had commenced, as well as rules on the length of detention.

5. He mentioned a number of binding instruments issued by the Supreme People's Court concerning the punishment applicable to judicial personnel of the People's Courts who broke the law during trials. An education and reform campaign had been launched throughout the country with a view to ensuring that members of the judiciary were impartial, fair, competent and well-disciplined. In 1999, 4,470 training courses had been run in the country for law enforcement officials and had been attended by 280,000 trainees. Furthermore, in order to familiarize prison staff with international human rights standards, the Ministry of Justice had compiled handbooks containing all the relevant instruments of the United Nations (Convention against Torture, Universal Declaration of Human Rights, Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials) together with Chinese laws and regulations.

6. The Chinese Government had not only raised the standards of judicial staff, it had also strengthened supervision and internal discipline procedures in order to avoid any abuse of authority. More than 3,000 departments had been investigated; over 13,000 judicial officers had been charged with torture or taking advantage of their functions and powers and the law enforcement organs had been placed under the supervision of the People's Political Consultative Conference. Furthermore, open trials provided an opportunity to denounce acts of torture and the extortion of confessions by torture during criminal proceedings. Some judicial organs had set up services such as telephone lines or Web sites with a view to making their work more transparent.

7. As part of its efforts to ban torture, the Chinese Government had stepped up its campaign to heighten citizens' awareness of the law and international human rights instruments with books and other publications and through the mass media. The Government provided legal advice and legal assistance to the general public in order to protect citizens' legitimate rights and interests.

8. He cited some specific examples to illustrate the Chinese Government's efforts in that direction. For example, a hotline set up by the Ministry of Justice provided legal advice and assistance by telephone and a travelling exhibition organized with the assistance of the Supreme People's Procuratorate on the functions and powers of procurators had produced positive social effects in the country. Those measures had led to a substantial reduction in cases of torture over the previous five years. The number of persons convicted of extorting confessions by torture and inflicting physical violence on persons in custody had fallen from 193 in 1998 to 173 in 1999. In conclusion, he pointed out that China was a developing country with a population of 1.2 billion, 900 million of whom still lived in rural areas. The country's economic and social development was therefore uneven. In addition, for historical reasons, China's legal system, especially the system of judicial supervision, still had some weak links which hindered the eradication of torture. Nevertheless, the Chinese Government was making progress in that respect and hoped that the Committee's constructive suggestions would make it possible to do even more to prevent the use of torture in the future.

9. Mr. MAVROMMATIS (Rapporteur for China), turning to the first part of the China's report, welcomed the amendments made in 1999 to the Chinese Constitution, which provided that henceforth China would be governed by the rule of law, in other words, in accordance with domestic law, customary law, international treaty law and, consequently, the Convention against Torture. It would be useful to know whether current laws and practices were consistent with those new constitutional provisions. He commended the cooperative spirit displayed by China when it presented its various periodic reports, including the supplementary report and the core document. They were all, excellent,

had been drawn up in accordance with the Committee's General Guidelines on the Form and Contents of Reports and had taken account of the questions raised by Committee members and of the conclusions and recommendations they had put forward when earlier reports had been considered. In that connection, it would be helpful if the next periodic report from China would base itself also on information supplied by non-governmental organizations, whose input was vital.

10. He noted with satisfaction that China had revised 1979 version of its Penal Code and Code of Criminal Procedure. While no tangible results had yet been achieved, there was no denying that China had embarked on a process of harmonizing its domestic legislation with international standards. Both texts, which had been in force for three years, offered the appropriate authorities the opportunity to check whether the procedures followed were consistent with international standards and to eradicate the torture which had existed for decades. He was, however, concerned by the arbitrary nature of administrative detention (in cases where the separating line between a real offence and a mere error was not clear) and invited the Chinese Government to put an end to that practice and to base itself on the principle thereby detention could only result from legal or judicial process.

11. He would like some explanations concerning the "other criminal cases" heard by military tribunals referred to in paragraph 36 of the core document (HRI/CORE/1/Add.21/Rev.1), adding that the latter should not hear and decide civil cases save in exceptional circumstances. He also wished to know whether, as paragraph 52 of the same document might suggest, any legal provisions existed which did not rest on the principle that international treaty law took precedence over municipal legislation. Furthermore, wondered about the total absence in the report of information about special forms of torture inflicted on women and domestic violence, their incidence and the measures taken by the Chinese Government to combat them. Similarly, he wished to know why the vast majority of orphans in China were girls and requested fuller information about family planning in China.

12. Turning to general matters, particularly the issue of the Falungong, Mr. Mavrommatis said that the Committee against Torture had taken an interest in the question of religious sects long before it had appeared on the agendas of the human rights organizations. He would welcome details of the case of Ms Chen Zixiu, a member of the Falungong from the province of Shandong, who had been the victim of torture, according to an NGO called "Human Rights in China". Apparently, an inquiry into the circumstances surrounding Ms Chen's death had been ordered by the World Organization against Torture, and he would like to know what its findings had been.

13. He recalled that capital punishment was not forbidden under either the Convention or the International Covenant on Civil and Political Rights, although the latter instrument tended to favour its abolition. Nevertheless, the way in which an execution was carried out and the methods used might be contrary to the provisions of article 16 of the Convention. Admittedly, the Chinese authorities had introduced executions by lethal injection following a recommendation by the Committee, but according to certain information received, the use of injections remained the exception and earlier practices — parading the condemned person through the streets, execution by firing squad, etc. — still persisted: the central Government should ensure that the recommendations were enforced throughout China.

14. The State party had attempted to incorporate provisions into its domestic legislation which reproduced the definition in article 1 of the Convention. However, on the one hand, those provisions appeared to apply only to public servants in the strict sense of the term and, on the other, a regulation dating from 1999 stated that torturers could be prosecuted only if their victim was killed or seriously injured: psychological torture, in particular, was not taken into consideration. It would therefore be necessary to fill in those gaps, which were also incompatible with article 2 of the Convention. In that connection, he would like more information on the issue of whether the orders of a superior could be cited as an excuse for acts of torture (that question was even more pressing in respect of Hong Kong).

15. He considered that the information provided in respect of article 3 in the previous report was inadequate. In view of a recent case of reciprocal extradition between China and the Russian Federation, the Committee needed to know what legal provisions and procedures existed to guarantee that persons who might be subjected to torture in their own countries would not be returned there. It would also be useful to know whether the procedure governing extradition, *refoulement* and expulsion allowed for recourse or review of the decision by another jurisdiction. Under article 4 of the Convention, he recalled, all acts of torture as defined in article 1 should be explicitly considered as offences and should be punishable by appropriate penalties.

16. Under article 5 of the Convention, States parties should establish their jurisdiction not only over offences committed on their territory or by their nationals, but over any acts of torture, wherever they had been committed. It would therefore be important to know whether Chinese legislation included provisions which allowed the State party to arrest, prosecute or extradite, independently of any existing extradition treaty, a known torturer who was on its territory. Since article 7 was intended to ensure a fair trial for all, he asked whether Chinese legislation contained any provisions to that effect, for instance provisions guaranteeing everyone the right to a speedy trial and/or the advice of a lawyer. He also wished to know whether there was legal aid system in the State party which allowed accused persons, especially ones who risked a prison sentence, to obtain the services of a lawyer, and whether that also applied to the early stages, immediately after arrest, when people were most likely to be tortured. In respect of paragraph 21 of the report, he said that the Committee needed to know how the provisions of article 8 were implemented in the absence of an extradition treaty, rather than the list of countries with which China had concluded such treaties. In respect of article 9, it would be useful to know what mutual judicial assistance existed in the case of States with whom China had no mutual judicial assistance treaty.

17. Mr. SILVA HENRIQUES GASPAR (Co-Rapporteur for China) thanked the Chinese delegation for the frank and fruitful dialogue which had developed. He congratulated the State party for its efforts to develop mandatory training and study of appropriate methods and procedures of interrogation, in order to prevent the extraction of confessions by force. The State party should likewise be congratulated on the recent changes to the Code of Criminal Procedure, designed to improve standards for the protection of suspects' and accused persons' rights, which had introduced an adversarial system with trials held in public and abolished certain long-standing practices relating to internment and other measures of administrative coercion. China's efforts to prevent the use of force during interrogation, referred to in paragraph 27 of the report, were also worthy of encouragement, and it would be interesting to know what specific measures had been taken and what the initial results had been.

18. The Chinese authorities had also made a considerable effort to implement the provisions of articles 12 and 13 of the Convention and to take the necessary measures in cases of torture by agents of the State, as shown by paragraphs 37 to 39 of the report in particular. The report gave figures for the number of complaints and the penalties imposed, but they seemed very few compared with the very large number of allegations in the documents issued by non-governmental organizations, which had been brought to the Committee's and the delegation's attention: could the delegation provide information about the type of penalty imposed and comment on the apparently considerable gap between the many allegations of torture and ill-treatment and the investigations conducted and penalties imposed, which were much fewer in number?

19. Article 15 of the Convention obliged States parties to ensure that any statement or evidence obtained by torture should not be admissible, and that requirement applied to indirect as well as direct evidence. Did the Chinese courts take that fact into account: would they consider evidence obtained as a result of an illegally obtained confession to be inadmissible, for example? What attitude would the courts take to an allegation of torture made in a closed trial, for instance when State secrets were

involved? In such a case, how did China ensure that its obligations under article 15 were fulfilled, if the trials were not held in public and no external monitoring could be ensured? It would also be useful to know whether accused persons had the right to remain silent.

20. Experience had shown that the danger of violations of article 16 of the Convention was greatest in cases of arbitrary detention where supervision was inadequate. The existence of a system of administrative detention and other custodial measures such as re-education through labour was a source of concern in that regard. He would welcome clarification, from the point of view of the application of article 16, of existing administrative measures which did not seem to be covered by any safeguard that would effectively prevent cruel treatment or punishment. There seemed to be no clear-cut definition of non-criminal behaviour warranting the application of such measures, no judicial supervision and no provision for access to a lawyer by the persons concerned. He would also welcome particulars of the mandatory internment regime for the mentally ill. According to paragraphs 54 and 56 of the report concerning the review of death sentences with a two-year stay of execution, the death penalty could be commuted to life imprisonment if the convicted person committed no further crime during that two-year period. It was hard to see, however, what kinds of offences could be committed by a person who was sure to spend the entire period in detention.

21. There were also a number of specific issues to be raised. First, under what conditions did detainees have access to a doctor? Could they be examined at their request by a practitioner chosen by themselves or their family, or were they seen by an officer of the prison medical service? Second, it was a well-known fact that persons deprived of their liberty ran the greatest risk of being tortured during the period of police custody, i.e. the period between being arrested and being brought before an independent judicial authority, who ruled on the lawfulness or otherwise of the deprivation of liberty. Reducing that period was one of the best ways of preventing torture and ill-treatment in police stations. But it seemed from the information received that policy custody could be extended in China for up to 10 days, or even 37 days according to some sources. He wished to know more about the situation in that regard and about the rights of persons held in police custody. Did they have access to counsel of their choosing and, if so, at what stage of the proceedings? Was counsel present at the first examination? He also inquired about the circumstances in which meetings with counsel took place: in private, in the presence of an official but under acceptably discrete conditions, or under close surveillance. There had been reports of the filming of meetings with counsel. A further important point was whether legal assistance could be denied and, if so, in what circumstances and for what category of proceedings. What happened, for example, when a case was held to fall within the ambit of State secrecy?

22. Articles 12 and 13 of the Convention stipulated that all acts of torture committed by a public official should be systematically subjected to a prompt and impartial investigation . But according to a directive by the Principal Public Prosecutor dated 16 September 1999, investigations into the offences specified in article 247 of the Penal Code were to be instituted only in the most serious cases, for example when confessions or statements had been obtained by the use of violence from more than three persons or on more than three occasions: the directive was difficult to reconcile with the requirement that an investigation should be undertaken in every case.

23. Mr. YAKOVLEV said that the development of a State's legal system was a telling indicator of the progress of a society and he therefore welcomed the positive steps taken by a great country like China. However, legislation was one thing and its practical application another. The enactment of a good law was just the beginning and every jurist knew that its implementation could be undermined by the way in which it was interpreted. Thus, article 247 of the Penal Code, which made satisfactory provision for the punishment of acts of torture, had been interpreted in a disturbing way by a Chinese commentator, Sun Qian - who had admittedly not been expressing the official view - in an article

published in 1998 in a legal journal to which Amnesty International had drawn attention. In that article, the author had stated that brutality was understandable and acceptable where circumstances so required and where it was motivated by the general interest, and that torture was necessary in certain cases of emergency. That was a very serious assertion because it implied that torture could be deemed not only acceptable but also necessary. Although the view expressed was that of a commentator, legal scholarship was known to reflect existing practice or was expected to offer guidance. In any case, it was a view that was totally incompatible with the Convention. He therefore requested the Chinese delegation to clarify the issue raised and to comment on the application of article 247 of the Penal Code in practice.

24. Mr. EL MASRY, referring to paragraph 7(a) of the third periodic report, which mentioned abolition of the system of detention for interrogation as one of the measures taken to strengthen guarantees against torture, asked whether any measures had been taken with regard to detention in re-education through labour camps. Many non-governmental organizations had reported the existence of such camps in the Uigur Autonomous Region of Xinjiang, in which Uigur prisoners were allegedly compelled to work in extremely harsh conditions. He asked whether the training courses for law enforcement personnel were attended by all members of the forces of law and order, including those outside the criminal justice system.

25. Ms. GAER said that, while she viewed the legislative reform under way in China as crucially important, she feared, like some non-governmental organizations, that it affected procedure rather than substance, especially in the area of criminal justice. Measures such as the abolition of reasoning by analogy in law were certainly a major step forward but lack of change in other areas, such as the existence of places of detention outside the judicial penal system, remained a source of concern and raised doubts as to whether the Convention was being fully applied in that regard.

26. According to paragraph 9 of the third periodic report, the Regulations on the Use of Police Instruments and Weapons by the People's Police clearly defined the circumstances in which police instruments and weapons were to be used. She wished to know which police instruments were deemed to be compatible with the regulations. A number of non-governmental organizations had reported that the police sometimes used electric prods or batons: were such instruments allowed and in what circumstances could they be used?

27. She noted that, according to paragraph 10(d) of the third periodic report, the Supreme People's Court had issued provisions requiring all cases to be tried in open court except those involving State secrets or personal privacy and those concerning minors. The exceptions cited were a source of concern and raised the general issue of transparency of criminal justice procedures. For example, one non-governmental organization deplored the fact that information on imprisonment and convictions or even records of court hearings were not systematically published and that official authorization was still required to attend a trial. Were those reports accurate?

28. With regard to article 7 of the Convention and access to counsel, she asked what happened if a person was not charged with a criminal offence but placed in administration detention in an internment centre or a re-education through labour camp. Could such a person consult a lawyer? Was it true that defendants in criminal proceedings could see a lawyer only after the first stage of the inquiry? If it was, the situation was extremely worrying because arrested persons were most vulnerable during the initial period of detention.

29. According to paragraph 64 of the third periodic report, the Chinese Penal Code defined a practitioner of torture more broadly than the Convention and did not differentiate between torture by a public official and by any other person. But some sources claimed that the provisions concerning

torture and ill-treatment were not applied to law enforcement personnel in detention centres or re-education camps. She requested the Chinese delegation to clarify that point and to indicate whether officials belonging to that category had been prosecuted and punished as appropriate for acts of torture. She welcomed the data provided in paragraph 68 of the report regarding investigations by the Chinese inspectorate. She would appreciate receiving a breakdown of the statistics, if possible, by category of crime, region, sex of the perpetrator, sex of the victim, etc.

30. Death in detention was an issue of great concern. The figures provided by Amnesty International were deeply disturbing. As apparently only one third of all cases of torture were prosecuted, the question arose whether the only cases brought before the courts were those in which detainees had been particularly badly treated or had died in detention. Another subject of concern was violence among inmates. According to a number of sources, some inmates acted as leaders and stirred up violence in prisons. Were there regulations to punish such behaviour? If an inmate was ill-treated or even killed by another inmate, who was responsible? Would the authorities undertake an investigation in such cases?

31. Violence could also assume specific forms depending on a person's sex. She asked whether complaints of sexual violence had been recorded and how the staff responsible for supervising women detainees was composed. According to NGO reports, a number of Tibetan women, especially nuns, had been sexually assaulted and raped, and some had allegedly died in prison as a result of sexual abuse. Could the victims of such acts of violence file a complaint and demand compensation and rehabilitation? Had law-enforcement officers ever been prosecuted and punished for sexual violence? Had the problem of violence based on sex been incorporated in training courses for officials? It had also been reported that organs could be removed from the bodies of executed persons, despite the fact that the prior consent of the condemned person or next of kin was normally required in such cases. How was the prison population informed and consulted in that regard? Lastly, with regard to access to complaint mechanisms, a source had reported that many accused persons in the Autonomous Region of Xinjiang complained of being subjected to acts of torture, but that the courts failed to take account of their complaints and did not transmit them to the public prosecutor. How did the Chinese Government protect the right of detainees to lodge complaints?

32. Mr. CAMARA raised the question of the right to silence of a person under arrest or interrogation. He understood that the matter was currently being discussed in China among specialists in criminal law. He was interested in hearing the Chinese delegation's comments on the subject, since it was a fundamental right and a guarantee against torture. Referring to article 48 of the Penal Code (para. 54 of the report), he expressed surprise that a person could be sentenced to death with a stay of execution, a penalty that must entail considerable psychological hardship. Could the sentence be commuted to a less severe penalty?

33. Mr. RASMUSSEN, referring to the application of article 14 of the Convention, drew attention to the fact that there were more than 200 centres for the rehabilitation of victims of torture in the world. He understood, however, that there were no such centres in China, a situation that the Chinese authorities justified on the grounds that torture victims could be treated under the general health system. But the rehabilitation of torture victims called for special skills. Moreover, many States, acknowledging the importance of rehabilitating torture victims, offered financial support to rehabilitation centres or contributed to the United Nations Voluntary Fund for Victims of Torture. But China seemed to be one of the four or five countries that had never contributed to the Fund. What was the current position of the Chinese Government on the question of rehabilitation of victims of torture?

34. The CHAIRMAN, speaking in his personal capacity, said he wished to know what exactly was the position of the administrative detention regime in China and what mechanisms existed to protect the

rights of detainees. With regard to the death penalty, he was particularly concerned to note that executions could take place in public. Having learned that the number of executions carried out the previous year had not declined and indeed had reportedly increased, he inquired about the exact number of persons executed.

35. According to the report prepared by the Special Rapporteur of the Commission on Human Rights on torture (E/CN.4/2000/9), substantial changes had occurred in China over the past 20 years and ill-treatment, although it had not disappeared, had substantially declined. He was alarmed to note, however, on taking a closer look at the identity of the tortured persons, that they often belonged to minority groups, i.e. ideological, religious or national minorities. The use of torture by electricity was also mentioned by the Special Rapporteur. In that connection, he was interested in hearing more about the case, mentioned by the Special Rapporteur in paragraph 216 of his report, of the death under torture of an Air Force major arrested in 1998 and about the fact that the investigation had concluded that the allegations of torture were unfounded. If the Chinese delegation was not familiar with the case, it should reply later in writing. Lastly, given the numerous allegations of ill-treatment and torture of Tibetans and inhabitants of the Xinjiang region, he requested the delegation to report on measures taken to remedy the situation and to prevent such acts.

The meeting was suspended at 12.05 and resumed at 12.15 p.m.

36. The CHAIRMAN invited the Committee to consider the second part of the report of China concerning implementation of the Convention in the Hong Kong Special Administrative Region.

37. Mr. QIAO Zonghuai (China) recalled that Hong Kong had become a Special Administrative Region on 1 June 1997, and that since then the Chinese Government had been responsible for the Region's foreign affairs and had assumed responsibility for international obligations arising from implementation of the Convention. Under the Basic Law, the Region had a legal and administrative system of its own which would be maintained for 50 years, so that implementation of the Convention there was not strictly the same as in mainland China. It was therefore the Government of the Special Administrative Region which had drafted that part of the report, and the same procedure would apply to Macao, which had been returned to China on 20 December 1999.

38. Mr. WONG (China), introducing Part II of the report concerning the Hong Kong Special Administrative Region, said that when he had presented Hong Kong's report in 1995 he had stated that the Basic Law, which had become Hong Kong's constitutional document, guaranteed that the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights would remain in force. Article 28 of the Basic Law expressly prohibited torture, and Hong Kong continued to enjoy all the human rights safeguards that had long been in place and which were described in the report.

39. He was pleased to inform the Committee that the monitoring procedure of the Independent Police Complaints Council was well established, and had indeed been strengthened by the appointment of former Council members and other community leaders as independent observers of investigations conducted by the Complaints Against the Police Office. Concerning the question of the Vietnamese refugees, which the Committee had raised in its concluding observations of 17 November 1995, he was pleased to report that a decision had been taken in February 2000 to allow refugees, non-nationals and members of their families to apply for permanent settlement in Hong Kong in view of the fact that the Pillar Point Refugee Centre would be closing for good.

40. Regarding the case of the four police officers found guilty of assaulting a drug addict to extract a confession, he recalled that the decision not to charge those officers under the Crimes Ordinance had

been strongly contested. In that connection, in Hong Kong, as in any other common law jurisdiction, a decision whether to prosecute, and if so on what charge, depended on the situation prevailing at the time the decision had to be taken, and it was sometimes better to opt for lesser charges if they offered a better chance of securing a conviction. In the case concerned, the evidence available was not in his view sufficient to secure a conviction under the Crimes Ordinance.

41. On the question of the independence of the judiciary and the rule of law, and more specifically in regard to legal action in respect of right of abode, he assured the Committee that the interpretation of the Basic Law by the Standing Committee of the National People's Congress was legal and constitutional, and entirely consistent with the rule of law. Lastly, in response to the Committee's concerns as to the independence of the judiciary, he reaffirmed the willingness of the Hong Kong authorities to respect that fundamental principle, and its total commitment to implementation of the Convention. He was ready to answer any questions the Committee might wish to ask.

42. Mr. MAVROMMATIS welcomed the decision taken by China to continue to implement international instruments after the return of Hong Kong to China. Referring to article 21 of the Convention and the related declaration, he said that the provisions it contained existed in numerous international instruments, but had never been invoked. At most, such provisions might be appropriate in the context of such bodies as the Council of Europe or the Organization of American States. The protection the article was supposed to provide thus appeared to be effective only in theory. On the other hand, he believed that article 22 of the Convention was important, and he would like to see China and the Hong Kong Special Administrative Region make a joint declaration under that article. In fact, protection of human rights and fundamental freedoms became a reality only if the necessary mechanisms were available, such as a body responsible for forwarding individual communications or petitions, a national human rights commission or a mediator.

43. He had not received a reply to his question on domestic violence and trafficking in women, and would like to be given some details about how those problems were tackled. While he welcomed the positive outcome to the problem of Vietnamese refugees in Hong Kong, he would like to know whether as a general rule judicial supervision continued to apply even after decisions had been taken by the chief of the administration and the official hierarchy.

44. In his view the definition of "lawful authority" was much too broad, and should be made narrower and more specific. While he was glad that article 39 of the Basic Law incorporated some of the provisions of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights, he regretted that it contained no full definition of torture which would make it possible to prosecute and punish the perpetrators of all the offences listed. Similarly, he welcomed the creation of the Independent Police Complaints Council, but was surprised to learn that no complaints had yet been filed. Why should that be? Was the definition inappropriate? Was it ignorance, the cumbersome nature of the procedures making it difficult to establish proof, or was it lack of confidence in the investigation process?

45. Referring to the case of the four police officers mentioned by Mr. Wong, he said that although he was fully aware that it was sometimes preferable to opt for less serious charges if they offered a better chance of securing a conviction, he considered that in that specific case the reason given was very unconvincing and could detract from the effectiveness of justice.

46. On the question of reuniting families, he wondered whether problems of discrimination might arise if, for example, in the same family one child was born in Hong Kong and another in mainland China. He would appreciate clarification on that point.

47. Lastly, since the chief objective was to reduce the occurrence of torture, he could suggest certain steps to achieve that objective. Greater efforts should be made to make police training more effective using available innovative scientific methods so as to ensure at least that officers did not resort to violence through incompetence. An independent, swift and effective system of investigation should be set up, to examine complaints and start proceedings. Those convicted should be severely punished, and there should be frequent, unannounced inspections of places of detention to ensure that no violence was used and transparency.

48. Mr. SILVA ENRIQUES GASPAR, referring first to articles 12 and 13 of the Convention, pointed out that for an investigation to be impartial it had to be undertaken by a body with the necessary composition and powers to guarantee an independent investigation. He doubted whether the Complaints Against the Police Office fulfilled those requirements, in view of the limited powers of the Independent Police Complaints Council. Could the delegation give more details on that point? Second, Hong Kong's judicial system appeared generally speaking to meet the requirements of article 15 of the Convention, since in some cases the courts had declared evidence obtained by torture to be inadmissible. However, he feared that those statistics were only the tip of the iceberg.

49. Ms. GAER shared the concern expressed by Mr. Mavrommatis concerning the absence of any mention of cruel, inhuman or degrading treatment in the Basic Law and in the definitions of torture. Even if the law did not explicitly prohibit such treatment, it was clear from the report and from the evidence that torture was not confined to acts committed by officials, but that it also included acts committed by others when carrying out official duties. She would appreciate clarification concerning the nature of such duties. In view of a certain ambiguity in the Basic Law, she would also like to know whether it was possible to be charged with torture and in the end convicted for acts of violence. Further, could the delegation confirm whether, if a person could prove that he had lawful authority to commit acts of torture, that would have the effect of invalidating the prohibition of torture?

50. The report showed that a high proportion of confessions were found inadmissible by the courts on the grounds that they might have been obtained by force. She asked whether more detailed statistics were available, and also whether any of the recommendations made - such as instituting a commission on legislative reform or recording interrogations on video - had been implemented. Lastly, concerning sexual violence in prisons, she would like to know whether any security and surveillance measures existed, whether the procedure for filing complaints was sufficiently simple, and whether any efforts had been made to raise awareness of problems of sexual discrimination. Also, were there any repatriation, compensation and rehabilitation mechanisms for the victims of such ill-treatment, or records of cases in which those responsible had been punished?

51. The CHAIRMAN said that the Chinese delegation would be invited to respond to further questions by members at a subsequent meeting of the Committee.

The meeting rose at 1 p.m.

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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 417th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 May 2000, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.417/Add.1.

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GE.00-41900 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Portugal (continued) (CAT/C/44/Add.7)

1. At the invitation of the Chairman, the delegation of Portugal (Mr. Pais, Ms. De Albuquerque, Mr. Ferreira, Ms. de Matos, Mr. Dias and Ms. Carvalho) took places at the Committee table.

2. The CHAIRMAN invited the Portuguese delegation to present its replies to the questions raised by the Committee at a previous meeting.

3. Mr. PAIS (Portugal) thanked the Committee for its positive appraisal of his delegation's report and initial statement. The number and type of questions the Committee had raised reflected well on the thoroughness of its work as a treaty monitoring body.

4. Turning first to the Chairman's comments and questions on deficiencies in police culture and the relationship between the police and the public, he said that, while the former could not be changed overnight, the Portuguese authorities were making far-reaching efforts to modernize the Organization Acts that regulated the country's police forces: the Judicial Police were contributing to criminal investigations under the supervision of the public prosecution, the Public Security Police (PSP) was relinquishing its military connections and becoming a civilian-based force (its first non-military Chief Commander had recently been appointed), and the Republican National Guard (GNR) was also being modernized. Much greater care was being taken in recruiting new members for all those forces: admission requirements had been raised, and new initial assessment and training techniques, such as psychological testing, had been introduced, involving participation by members of civil society such as university professors and representatives of non-governmental organizations (NGOs). In the past three years, every member of the police forces he had mentioned - over 46,000 people - had attended new training programmes that made extensive reference to human rights issues and perspectives, monitored the trainees across all areas of activity, and also covered the use of firearms, supervision of other agencies, and disciplinary and criminal responsibility in cases of abuse of authority.

5. An integrated programme had been developed in order to improve the relationship between the police and the public - the latter meaning not only Portuguese nationals but all people living in or visiting Portugal. The programme was intended to bring about greater police visibility, greater police insertion in community life, and improved knowledge of and dialogue with the public and other bodies in society, particularly the municipalities. The integrated programme comprised several activities, the main ones being the "Safe School Programme", "Elderly People in Security" and "Innovate", which was concerned with contacts between the police and ordinary victims of crime. Collaborative arrangements had been established between the Ministry for Internal Affairs and the Portuguese Association for the Support of Victims.

6. With regard to the Chairman's questions on the definition of torture, he noted that the definition contained in article 243 of the Portuguese Penal Code differed from that contained in

article 1 of the Convention in only relatively minor respects: for example, the words "or for any reason based on discrimination of any kind" had been excluded. The reason was that the principles of legality and typification (i.e. a strict adherence to relevant elements), as set forth in article 30 of the Portuguese Constitution and article 1 of the Penal Code, ensured that expressions with indeterminate or unascertainable meaning in the definition of elements constituting a criminal offence must be excluded from the pertinent provisions of the Penal Code. In the same context, it should be borne in mind that the incriminatory provisions of article 244 of the Penal Code applying to acts of torture frequently overlapped with other incriminatory provisions of the same Code. In such cases, the courts normally imposed the more severe punishment.

7. Turning to the Chairman's questions on trials for acts of torture, he said that in the past three years only one case of torture had been independently recorded. The case, which had been documented by Amnesty International, concerned a PSP officer at Sintra who had applied electric shocks to a prisoner. The officer had been dismissed from the force following disciplinary procedures and was currently undergoing criminal trial. Another case that might have constituted torture had occurred at Sacavém in 1996; however, following the death of the victim the GNR officer involved had been found guilty of the more serious crime of murder, thereby incurring a punishment of 12-25 years' imprisonment instead of the penalty of 1-5 years applicable to torture. The case illustrated the principle of subordination he had referred to in his previous answer, whereby punishment for the more serious crime absorbed that for the less serious crime if the same essential facts applied to both.

8. In reply to another question put by the Chairman, the cases of alleged physical abuse by members of the police forces mentioned in paragraph 51 of the Portuguese delegation's report concerned offences said to have been committed by officers of the PSP and the GNR during the period 1996-1998, and brought to the attention of the Inspectorate-General (Inspeccão-Geral da Administracão Interna - IGAI). It was the practice of the IGAI to investigate only the most serious cases involving death, torture, serious physical abuse and abuses of authority. Other cases were handed over to the domestic police forces, with the IGAI maintaining a monitoring role to ensure that due process was completed.

9. Serious cases investigated by the IGAI during the period 1997-1999 comprised: in 1997, 23 cases involving one death, 6 cases of physical abuse and 3 cases involving abuse of authority; in 1998, 32 cases involving four deaths, four suicides, 11 cases of physical abuse, 2 cases of wounding by firearms and one violation of fundamental rights; in 1999, 34 cases involving four deaths, 14 cases of physical abuse, 5 cases of wounding by firearms, 1 case of abuse of authority and 1 case of violation of fundamental rights.

10. The outcome of those inquiries had been the following. In 1997, police officers had been found guilty in eight cases and the following punishments had been applied: one reprimand, three fines, three suspensions from duty, three prison terms (for GNR officers), and one dismissal. In 1998, officers had been found guilty in eight cases and the following punishments had been applied: three reprimands, one removal from active service and four suspensions from duty. In 1999, officers had been found guilty in 13 cases, leading to four suspensions from duty, one reprimand, five fines and one prison term.

11. Turning to the Chairman's questions relating to the Amnesty International report discussed earlier, he said that all 14 deaths reported as having occurred in police custody between 1996 and 1999 had been investigated. Only the death recorded at Sacavém in 1996 had been found to have been caused deliberately by a police officer. Together with two collaborators, he had been dismissed from the GNR and sentenced to prison. In two of the remaining 13 cases - those of Olivio Almada and Victor Santos - it had not been proved that their deaths had resulted from action taken by the officers during the detention. In the former case, the officers had been found guilty of illegal detention, and in the latter the evidence seemed to indicate that the victim had committed suicide and that the officers were not involved.

12. That left 11 cases, which had all involved victims shot during police operations against crime or while the perpetrators of crimes were being apprehended. In six of those cases - Carlos Araújo, Paulo Jorge, Manuel Magalhães Silva and three others not named in the Amnesty International report - it had been found that police officers had made excessive or unjustified use of firearms, and suspensions from duty had been ordered. Some officers had been tried and found guilty of negligent homicide, which carried a penalty of up to five years' imprisonment. In two cases (Fernando Azevedo and one other not mentioned in the report), the officers' use of firearms had been found to constitute a legitimate act of self-defence. The three most recent cases had occurred in Porto in the current year, and proceedings were still in their early stages. In the first, involving police intervention in a public disturbance, the officers involved were currently in pre-trial detention.

13. With regard to the section of the Amnesty International report dealing with ill-treatment by police officers, disciplinary or criminal investigations were under way in the cases involving Marco Fernandes, Juvenal Ova and Mario Rocha. In view of its serious nature, the first case was being monitored by the IGAI in addition to the regional command of the PSP. The IGAI had also investigated the case of the GNR officers in Anadia, and sufficient evidence had been found to initiate eight disciplinary hearings. Criminal proceedings had also been initiated.

14. Of the other cases mentioned, the one involving Carlos Zurita had been closed, since the victim had declined to bring a complaint; the case involving the two Mecha brothers had been investigated by the IGAI and the officers exonerated (six officers had been wounded in attempting to deal with a public disturbance and the police were found to have used legitimate force); and in the cases of Pedro Silva and Pedro Sousa, injured during a demonstration in Lisbon, the facts of the situation had been confirmed, but only in the first case had a perpetrator been found and punished.

15. With regard to the section of the Amnesty International report on illegal detention by police officers, he did not agree that police officers were in the habit of failing to complete detention forms. All the checks carried out, in particular the unannounced inspections by the IGAI, tended to support the opposite conclusion. There had indeed been illegal detention in the cases of Olivio Almada and of several persons at Anadia, but they were exceptional. As to the case of Bruno Mauricio, the inquiries conducted by the police inspection service and the courts had failed to establish the veracity of his complaint.

16. Turning to the section on effective impunity, he rejected the allegation of a "malaise affecting the Portuguese justice system in general". While he accepted that, in general terms, the

cases to which the section referred raised difficulties, criminal charges had been brought in all of them. The question whether the sentences imposed were light was one that the courts alone were able to assess, on the basis of the facts and circumstances of each case. That did not mean that the Portuguese authorities were insensitive to information presented in the media or merely paid lip-service to the principle of judicial independence or presumption of innocence. Rather, he was satisfied that the information provided for the Committee on all the cases cited by Amnesty International demonstrated the adequacy of the measures taken to prosecute those justly accused of acts of torture or ill-treatment.

17. A register of criminal proceedings against law enforcement officials had been established in the Office of the Attorney-General, with a view to collating information from courts throughout the country and establishing tighter controls over the prevention and punishment of crimes relating to the Convention against Torture. Furthermore, the public prosecution service automatically investigated any case of torture or ill-treatment brought to its attention by any means whatsoever, even when the victims failed to lodge complaints through the prescribed legal channels. The only exception concerned the crime of minor common assault.

18. As to the question of violence against the inmates of Porto prison, raised in the Amnesty International document, a delegation of the European Committee for the Prevention of Torture (CPT) had carried out a 12-day visit to Portugal in April 1999 and the CPT, in its final observations on the visit, had requested the Portuguese authorities to prepare a report dealing specifically with the penitentiary facility at Porto. That report, submitted on 30 July 1999, described the measures adopted immediately and those planned for the medium term in order to follow up on the CPT's comments.

19. The first measure had been a thorough evaluation of the situation by the inspection service of the General Prison Services Directorate, focusing on violence between prisoners arising from overcrowding and drug problems. The evaluation had resulted in the adoption of the following measures: a reduction in the number of prisoners from 1,350 to 1,000; the installation of closed-circuit television as an additional surveillance tool; the introduction of additional compulsory patrols inside the facility; an increase (from 5 to 13) in the number of deputy chief guards responsible for monitoring the movement of prisoners in each wing (it was not the case, as the Amnesty International report stated, that prisoners performed that task); and, in recognition of the fact that most violence between inmates was drug related, improved access to health facilities, including more health personnel, better availability of methadone and antidotes, more support for HIV-positive prisoners, and stronger measures to tackle drug trafficking in the prison, including more searches and more sophisticated techniques. Finally, in the current year to date two Porto prison guards had been arrested, one of whom had been placed in preventive detention pending disciplinary action, while the other was simultaneously the subject of a disciplinary inquiry and criminal proceedings.

20. Already, the measures he had described had led to a certain easing of tension and improvements in the relationship between guards and inmates at Porto prison.

21. Turning to the question on universal jurisdiction raised by the Chairman, he said that under article 5.2 of the Penal Code, Portuguese courts enjoyed jurisdiction over all acts committed outside national territory provided they were covered by the terms of a treaty or

international agreement to which the State of Portugal was committed. Portugal therefore had no legal difficulty in accepting the commitments deriving from article 5 (a), (b) and (c) of the Convention against Torture. However, effective implementation of the jurisdiction of Portuguese courts depended on verification of the conditions specified in the Convention and in article 6 of the Penal Code, and was also subject to the universally accepted principles of ne bis in idem and aut dedere aut judicare.

22. The Portuguese penal system was adequately provided with the principles and norms of universal jurisdiction necessary to prevent impunity in cases where basic human rights were violated, in compliance with articles 8 and 29.2 of the Portuguese Constitution. The jurisdiction of Portuguese courts could thus be extended to cases such as that of General Pinochet. However, its effective implementation was dependent on concrete verification of the circumstances, conditions and alleged facts, as stipulated in articles 5 and 6 of the Penal Code.

23. Replying to questions raised by Mr. Yu, he said that a code on the physical conditions of detention facilities in police stations had recently been approved. In addition, the IGAI conducted unannounced inspection visits in police stations, especially those located in difficult areas and which had detention facilities. The inspector checked whether there were detainees, whether the detention logs had been filled out, and whether the dates were correct. The inspector spoke privately with the detainee, checked his information, and heard complaints.

24. Police agents must immediately inform the Public Prosecutor's Office of any detentions. The Code of Criminal Procedure forbade the questioning of detainees by police officers; hearings could be conducted only by judges. The IGAI was currently assessing whether the rigorous recommendations governing the criminal investigation phase were respected by police officers.

25. The Code of Criminal Procedure provided for the acceleration of the trial in cases involving serious crimes, through the intervention of the Procurator-General or, if the case had already come before the court, the Supreme Council of the Judiciary. Delays were investigated to determine responsibility. Various additional measures had been taken to tackle procedural delays, including the appointment of additional judges on an emergency basis, the establishment of quick, easy procedures for the simplest cases, and the creation of measures encouraging recourse to arbitration and court settlements.

26. The delegation believed that the information it had provided concerning the Porto prison, which was the only such establishment where a problem of violence between prisoners had arisen, should be sufficient. After visiting Portuguese prisons, the CPT had reported that the general climate and relations between prisoners and staff were fairly satisfactory. Violence between prisoners, a problem related to drug addiction, nonetheless deserved the close attention of prison administrations. Measures had been taken to improve the treatment of prisoners, to combat drug traffic in prisons, and to provide appropriate training to staff.

27. The delegation had provided information on steps taken to improve the treatment of prisoners in its introductory statement. With a view to combating the drug trade in prisons, detection methods had been improved and proceedings had been initiated against staff. A number of staff members had been expelled, and one had been sentenced to eight years in prison.

Several hundred visitors carrying drugs had been apprehended in 1998 and 1999. Five of those had been arrested, and one had been sentenced to seven years in prison. In addition, prison guards were subject to impromptu check-ups to assess their consumption of alcohol and narcotics. Although staff training courses covered the subject of drug addiction, a recent law required continuing training of staff in that subject and provided for the creation of staff support offices, with a view to ensuring their psychological and emotional stability.

28. Victims indeed had the right to lodge complaints and to receive special attention. Acknowledging that victims of domestic violence and sexual abuse had received inadequate attention when filing complaints, the Government had adopted information and education measures, supported the creation by NGOs of special victim-support offices, and instructed police chiefs to establish such offices in areas where NGOs had not done so. The Portuguese Association for the Support of Victims currently had 11 branches in 10 major cities that provided free, confidential support services, including accompanying victims in emergency situations, referring them to community agencies, providing legal and psychological counselling, offering police forces training in the treatment of victims of crime, and introducing victim-awareness programmes into schools and health centres. The number of victims that had requested support had dramatically increased over the previous decade to over 4,500 cases in 1999.

29. Even when victims did not lodge complaints through the appropriate channels, the Public Prosecutor's Office automatically investigated any case of torture or ill-treatment brought to its attention; the same applied to disciplinary proceedings. Strict communication procedures had been established between the Public Prosecutor's Office, the IGAI and the Directorate-General of Prison Services, allowing for closer supervision of cases handled by those entities.

30. The number of cases that came before the Fact Finding Commission for the Award of Compensation to Victims of Violent Crimes had grown steadily, reaching 82 in 1999, and award amounts had also risen. The average time required to process requests had also dropped considerably, and was currently about four and a half months.

31. Replying to questions raised by Mr. Camara, he said that under current legislation Portuguese citizens over the age of 16 must carry identification papers in public places, places open to the public and places under police surveillance. Article 250 of the Code of Criminal Procedure provided that police officers should request persons in such places to identify themselves if they had reasonable suspicions that a crime had been committed, that an extradition or expulsion procedure was pending, that a foreigner had entered or was residing illegally in the country, or that an arrest warrant existed.

32. If the person concerned failed to produce the proper identification document, the police could attempt to identify him by communicating with a third party able to produce it, by escorting the suspect to the place where the document was, or by having the suspect recognized by a third, duly identified person. If those efforts failed, police agents could then escort the unidentified person to the nearest police station and keep him there only for as long as it took to identify him, which must not exceed 2 hours, or 6 hours for a person suspected of one of the irregularities listed.

33. Police officers were required to show the suspect their badges, to inform him of the reasons for the identification request, to record the facts, and to allow him to contact someone. If the suspect unjustifiably refused to identify himself, he would be formally advised that his refusal was justiciable under the Criminal Code.

34. The report contained statistics on criminal proceedings instituted against police personnel. Simultaneously, the police station concerned initiated disciplinary measures. In grave cases involving death, torture, severe physical injury or grave abuses of authority, the IGAI conducted the disciplinary investigation, which was handled with due rapidity. Criminal proceedings involving cases in which the accused had been previously detained were also given priority.

35. Other, less serious, cases were subject to the general problems afflicting the Portuguese courts, including the backlog of trials, slow proceedings and the obligation to respect legal safeguards, and repeated appeals. In addition, the principle of the presumption of innocence required collection of sufficient evidence, or the trial could not proceed. That was not a matter of impunity but of respect for the necessary procedural safeguards of any criminal proceeding.

36. Disciplinary and criminal proceedings could indeed be undertaken simultaneously. Disciplinary proceedings sometimes began before the start of the criminal prosecution. When, however, the IGAI was informed of the occurrence of a crime, it must immediately communicate that information to the Public Prosecutor's Office, which in turn initiated the criminal proceedings. Conversely, the Public Prosecutor's Office, having initiated proceedings, was obliged to communicate the facts to the police station or the IGAI, so that disciplinary measures could also be taken. Occasionally, disciplinary proceedings were suspended pending the outcome of the criminal trial, especially when the evidence was inconclusive. In all circumstances, the principle of independence of the two kinds of proceeding was observed.

37. Responding to questions raised by Ms. Gaer, he said that the number of complaints had dropped in recent years owing to the training of law enforcement officials in human rights and professional ethics; the evaluation and monitoring of the activities of police forces and prison staff; the dissemination of information about international standards and norms (including the recommendations of the Committee against Torture and the European Committee for the Prevention of Torture) to all personnel working in law enforcement agencies; and the dissemination of information regarding behaviour that infringed on human rights and the disciplinary consequences arising therefrom.

38. The newly adopted amnesty law for minor offences had resulted in the release of about 1,500 prison inmates. It did not affect violations of fundamental rights and freedoms by law enforcement officers in the performance of their duties.

39. In late 1999, the administration of the territory of Macau had passed from Portugal to the People's Republic of China. Before that transition, Portugal had attempted to ensure that Macau would benefit from solid legal protections, particularly in the area of torture. By agreement between the two countries, the Convention against Torture had been extended to Macau in

mid-1999. The reporting obligation now fell to the Special Administrative Region of Macau; a report had not yet been presented. Furthermore, the Macau Criminal Code, adopted in 1995, contained three provisions relating to the crime of torture.

40. Under the terms of the 5 May Agreements, a referendum had been held in East Timor, marking the culmination of lengthy efforts by the international community, and particularly by Portugal, to ensure the Timorese people's right to determine its own political future. Following the wave of violence that had followed the announcement of the results, Portugal had requested the United Nations to intervene, the Security Council had taken action, and an international force had been deployed. In October 1999, the Security Council had established the United Nations Transitional Administration in East Timor (UNTAET), according it overall responsibility for the administration of that territory, including the exercise of legislative and executive authority and the administration of justice. Portugal could not legally extend the applicability of the Convention against Torture or of any other international instrument to East Timor. The Portuguese legal criminal framework nonetheless contained principles and rules that prevented impunity for such fundamental violations of human rights as genocide, slavery and traffic in human beings. There were no legal obstacles to exercising the jurisdiction of the Portuguese courts in such cases, if and when the factual conditions were consonant with the Portuguese Criminal Code and with article 5 of the Convention against Torture.

41. The Government had, however, made efforts to apply some minimum human rights standards in East Timor: regulations issued by UNTAET provided that persons performing public duties should observe internationally recognized human rights standards, citing the major United Nations human rights instruments.

42. Sexual harassment and abuse almost never occurred in Portuguese prisons. In recent years, three cases had been reported, one of sexual abuse and two of harassment; all had been investigated on a confidential basis. In the sexual abuse case, the guard had been dismissed. In one of the sexual harassment cases, the staff member had been dismissed; the other case was still pending.

43. Ongoing training programmes dealt with the role of the police in cases of violence against women. Those programmes featured videotapes that discussed support for women victims, described appropriate treatment methods, and emphasized that women victims should preferably be handled by women police officers and directed toward social, medical and legal support services.

44. The two officers who had sexually abused a young drug addict had been sentenced to six and a half and five and a half years' imprisonment respectively (the first for committing the abuse, the second for acting as lookout) and banned from exercising public duties for four years. They had appealed against the decision. Disciplinary proceedings had also been instituted with a view to their expulsion.

45. With regard to the matter of organ donations, a law enacted in 1994 had created a national registry of non-donors, and authorized persons to stipulate that they did not wish to donate organs after their deaths. That law had been widely publicized by the media.

46. Replying to a question raised by Mr. Rasmussen, he said that the code of medical ethics provided a general framework for the duties of doctors, and stipulated that a doctor must never cooperate in any act of torture, nor allow premises, instruments or medicine to be used for that purpose. In addition, doctors were strictly required to report to the competent bodies any case of torture that came to their attention. Doctors were also forbidden to feed against his will a patient on hunger strike, even when his life was at risk. Doctors providing health care in prison and detention facilities were obliged to respect the interests and personal integrity of the patient. Furthermore, if a person admitted to a prison was wounded, bore marks of abuse, or complained of having been beaten, the doctor must immediately examine and question the detainee. The results were sent to the perpetrator's superiors, who then initiated the appropriate proceedings.

The public part of the meeting rose at 4.05 p.m.